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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,125	12/26/2001	Patrick Joseph Bohrer	AUS920010614US1	3055

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IBM CORPORATION  
INTELLECTUAL PROPERTY LAW DEPT  
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EXAMINER
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STOYNOV, STEFAN

ART UNIT	PAPER NUMBER
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2116

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/027,125		BOHRER ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Stefan Stoyanov		2116	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 December 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-17, 19-27 and 29-37 is/are rejected.
- 7) ☒ Claim(s) 18, 28, 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, drawn to method for supplying energy, classified in class 713, subclass 340.
- II. Claims 9-38, drawn to method, system, and computer-usable medium having computer-executable instructions for energy management, classified in class 713, subclass 300.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as powering a computer from either an external AC source or a battery during off-peak or peak energy consumption period. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Casimer Salys on 12/22/2004 a provisional election was made with traverse to prosecute the invention of II, claims 9-38.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 1-8 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 9, 19, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barron in view of Dunstan.

Re claims 9, 19, and 29, Barron discloses a computer cluster system (FIG. 1) and a method for quorum negotiation for the nodes within the cluster, utilizing the communications over power mains to provide a secondary communications channel (column 2, lines 7-10).

Barron fails to disclose using an energy management method in the computer cluster system.

Dunstan teaches the method, system, and computer-usable medium having computer-executable instructions for energy management comprising:

determining a value for an energy condition (column 5, lines 26-37);

updating the said value continuously (column 5, lines 34-37);

comparing said value with a predefined limit regarding said energy condition (column 7, lines 28-30 and lines 47-54);

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based on said determining, said updating, and said comparing, utilizing at least one energy mode chosen from: operating said at least one computer on stored energy (column 9, lines 47-52); and standing by (column 9, lines 30-34 and lines 37-41);

In Dunstan, the energy management method provides power control and budgeting functions for a computer system (column 2, lines 39-41). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the energy management methodology, as suggested by Dunstan in the computer cluster system disclosed by Barron in order to implement the energy management method in a computer cluster environment.

Claims 10-17, 20-27, and 30-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barron in view of Dunstan, and further in view of Wilhelm.

Re claims 10, 20, and 30, Barron and Dunstan disclose the method, system, and computer-usable medium having computer-executable instructions for energy management.

Barron and Dunstan fail to disclose determination of energy consumption.

Wilhelm teaches reducing the peak power demand of a customer by controllably directing power from a storage battery (column 2, lines 40-44). In Wilhelm, directing power from a battery storage device is in response to the magnitude of the demand for peak power detected by the power management system (column 2, lines 64-67). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the methodology for peak power detection, as suggested by Wilhelm for the method, system, and computer-usable

medium having computer-executable instructions for energy management disclosed by Barron and Dunstan in order to determine the rate of energy consumption.

Re claims 11, 21, and 31, Wilhelm further teaches the method, system, and computer-usable medium having computer-executable instructions for energy management, wherein:

said energy condition is a price of energy (Wilhelm teaches direct correlation between price and energy demand and an energy management system designed to avoid demand (price) charges during high-energy consumption periods and thus teaches operation based on price -- column 11, lines 64-67, column 12, lines 1-3, FIG.4); and

said utilizing further comprises said operating on stored energy, when said price is greater than said predefined limit (column 12, lines 8-16, FIG.5).

Re claims 12, 22, and 32, Wilhelm further teaches the method, system, and computer-usable medium having computer-executable instructions for energy management, wherein:

said energy condition is a price of energy (Wilhelm teaches direct correlation between price and energy demand and an energy management system designed to avoid demand (price) charges during high-energy consumption periods and thus teaches operation based on price -- column 11, lines 64-67, column 12, lines 1-3, FIG.4); and

said utilizing further comprises said storing energy, when said price is less than said predefined limit (column 12, lines 17-21, FIG.5).

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Re claims 13, 23, and 33, Wilhelm further teaches the method, system, and computer-usable medium having computer-executable instructions for energy management, wherein:

said energy condition is a price of energy (Wilhelm teaches direct correlation between price and energy demand and an energy management system designed to avoid demand (price) charges during high-energy consumption periods and thus teaches operation based on price -- column 11, lines 64-67, column 12, lines 1-3, FIG.4); and

said utilizing further comprises said operating on external energy, when said price is less than said predefined limit (column 8, lines 60-67).

Re claims 14, 24, and 34, Wilhelm further teaches the method, system, and computer-usable medium having computer-executable instructions for energy management, wherein:

said energy condition is a rate of energy consumption (column 5, lines 7-16 and lines 24-24); and

said utilizing further comprises further comprises said operating on stored energy, when said rate is greater than predefined limit (column 9, lines 13-17).

Re claims 15, 25, and 35, Wilhelm further teaches the method, system, and computer-usable medium having computer-executable instructions for energy management, wherein:

said energy condition is a rate of energy consumption (column 5, lines 7-16 and lines 24-24); and

said utilizing further comprises said storing energy, when said rate is less than said predefined limit (column 8, lines 60-67).

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Re claims 16, 26, and 36, Wilhelm further teaches the method, system, and computer-usable medium having computer-executable instructions for energy management, wherein:

said energy condition is a rate of energy consumption (column 5, lines 7-16 and lines 24-24); and

said utilizing further comprises said operating on external energy, when said rate is less than said predefined limit (column 8, lines 60-67).

Re claims 17, 27, and 37, Wilhelm further teaches the method, system, and computer-usable medium having computer-executable instructions for energy management, wherein:

said energy condition is an amount of stored energy (column 9, lines 36, 37, 49, and 50); and

said utilizing further comprises said storing energy, when said amount is less than said predefined limit (column 9, lines 48-53).

***Allowable Subject Matter***

Claims 18, 28, and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Re claims, 18, 28, and 38, the prior art fails to disclose or suggest "performing, determining, updating, and comparing for a plurality of energy conditions".



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefan Stoykov whose telephone number is (571) 272-4236. The examiner can normally be reached from 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (571) 272-3670. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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